

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----)
IN RE: NATIONAL) MDL No. 2804
PRESCRIPTION OPIATE)
LITIGATION) Case No.
-----) 1:17-MD-2804
)
THIS DOCUMENT RELATES TO) Hon. Dan A. Polster
ALL CASES)
-----)

HIGHLY CONFIDENTIAL
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

VIDEOTAPED DEPOSITION OF
CHRISTOPHER DOMZALSKI

January 17, 2019

Chicago, Illinois

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1 MR. HOUTZ: Object to form.

2 THE WITNESS: I'm sorry.

3 BY THE WITNESS:

4 A. Yes, and, again, I would say the
5 combination of the policy along with those
6 discussions with legal and with the management
7 team.

8 BY MR. MOUGEY:

9 Q. Sir, if you turn the page, and you see
10 in the middle the cite to 21 CFR 1301.74. It's the
11 same section we just read.

12 Do you see that, sir?

13 A. Sorry. Where at?

14 Q. In the middle of the page, the block
15 quote.

16 A. Yes, yes.

17 Q. It's the same section of the federal
18 regs that we just reviewed together, right?

19 A. Yes.

20 Q. Do you see the sentence that, "It bears
21 emphasis that the foregoing reporting requirement
22 is in addition to, and not in lieu of, the general
23 requirement under 21 U.S.C. Section 823(e)."

24 Do you see that, sir?

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1 A. And react to it.

2 Q. -- and then take their policy and
3 procedure manuals and incorporate that direction
4 from the DEA into its day-to-day manuals, correct?5 A. My assumption would be that they would
6 react to it.7 Q. And I understand. We have said it's
8 important and we've said that it's reacting to it,
9 but what I asked was a little bit different.10 What I asked was: They would take the
11 direction from the DEA and make sure that that
12 information was included in its policies and
13 procedures, correct?

14 MR. HOUTZ: Object to form.

15 BY THE WITNESS:

16 A. Yes, I would expect that.

17 BY MR. MOUGEY:

18 Q. So, the fact that you expected that,
19 your group was relying on the policies and
20 procedures that Walgreens had in the context of
21 Walgreens' responsibility as a distributor for
22 Schedule II and Schedule III when performing your
23 audit, correct?

24 A. Yes.

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1 A. Yes.

2 Q. The next paragraph, "Thus, in addition
3 to reporting all suspicious orders, a distributor
4 has a statutory responsibility to exercise due
5 diligence to avoid filling suspicious orders."

6 Do you see that, sir?

7 A. Yes.

8 Q. All right. Now, let's stop for a
9 second.10 Do you have an understanding, just
11 generally, of what due diligence means?

12 A. Generally, yes.

13 Q. What is your understanding generally of
14 what due diligence means?15 A. Take actions to ensure, perform some
16 kind of review or evaluation.17 Q. Let's take it in the context of the
18 internal audit group, your group. Okay.19 Your group's due diligence would mean
20 explaining what you've told me today, that when
21 understanding Walgreens' responsibilities as a
22 distributor, you met with distribution center
23 management, correct?

24 A. Partially, yep.

<p style="text-align: right;">Page 158</p> <p>1 Q. And you also met with regulatory and 2 legal, correct? 3 A. We did. 4 Q. You also looked at Walgreens' policies 5 and procedure manuals, correct? 6 A. Correct. 7 Q. You also performed or interviewed 8 employees at Walgreens, correct? 9 A. Correct. 10 Q. And I'm assuming that your group would 11 typically also look at some documentation from 12 Walgreens, correct? 13 A. Correct. 14 Q. That's -- that could be referred to as 15 internal audit performing due diligence, correct, 16 sir? 17 A. Yes. 18 Q. Yes. So, in the context here, due 19 diligence wouldn't be a foreign concept in that 20 Walgreens as a distributor has a statutory 21 responsibility to exercise due diligence to avoid 22 filling suspicious orders, right? 23 A. Say that again. 24 Q. That you understand the context of due</p>	<p style="text-align: right;">Page 160</p> <p>1 (WHEREUPON, a certain document was 2 marked as Walgreens-Domzalski 3 Exhibit No. 8: 2/7/07 letter from 4 U.S. DOJ DEA; ABDCMDL00269687 - 5 0026960.) 6 BY MR. MOUGEY: 7 Q. What I want you to do is just -- 8 (Clarification requested by the 9 reporter.) 10 MR. MOUGEY: I'm sorry. 11 MS. SCHUCHARDT: Counsel, this appears to be 12 an AmerisourceBergen document that's confidential. 13 I have not been apprised that we have given 14 authority to show it to a Walgreens employee. 15 MR. MOUGEY: I have used this document in 16 about ten depositions at this point. It's a 17 general form letter sent to every single registrant 18 in the United States, and it's the -- it says right 19 on the first sentence, "This letter is being sent 20 to every commercial entity in the United States 21 registered with the Drug Enforcement Agency to 22 distribute controlled substances." 23 MS. SCHUCHARDT: Be that as it may, I have an 24 obligation to request if we can give permission.</p>
<p style="text-align: right;">Page 159</p> <p>1 diligence in this sentence that Walgreens has a 2 statutory responsibility before it fills suspicious 3 orders to exercise due diligence, correct? 4 A. Yes. 5 Q. Now, let's go back to Domzalski 3. Can 6 you tell me in the scope of this internal audit 7 whether or not your group looked to determine 8 whether or not Walgreens fulfilled its statutory 9 responsibility to exercise due diligence before 10 filling suspicious orders? 11 A. I can't tell you from the words that are 12 in the audit report, no. 13 Q. I will hand you what we'll mark as -- 14 MR. HOUTZ: Chris, do you want to do the lunch 15 break? 16 THE WITNESS: No, let's finish. 17 BY MR. MOUGEY: 18 Q. I have two more quick documents. I 19 think I told you I should be 20, 25 minutes. It 20 should be close. Okay? Is that okay? 21 A. Yes. 22 Q. Okay. Thank you. 23 MR. MOUGEY: I hand you what we are going to 24 mark as Domzalski 8.</p>	<p style="text-align: right;">Page 161</p> <p>1 Can you use another document in the meantime? 2 MR. MOUGEY: I don't have access to another 3 document. Would it be okay with you is if you 4 didn't waive any of your objections and if there is 5 any problem with us, that you have kept all your 6 rights under whatever the privilege or protective 7 order is, that we are not waiving anything by 8 letting us use this today? 9 MS. SCHUCHARDT: Go ahead. 10 MR. MOUGEY: Thank you. 11 THE WITNESS: So, can I just -- I have two -- 12 MS. SIBISKI: Counsel, can I have the Bates 13 number for Exhibit 7 and Exhibit 8. 14 MR. MOUGEY: Sure. It's ABDCMDL269687. It's 15 the February 7, 2007 letter that went to every 16 distributor in the country. 17 MS. SIBISKI: Okay. And I also need 7, 18 please. 19 MR. MOUGEY: MCKMDL00478906. 20 MS. SIBISKI: Thank you. 21 MR. MOUGEY: Certainly. 22 BY MR. MOUGEY: 23 Q. What I want you to just do quickly and 24 see if we can do this without going through each</p>

<p style="text-align: right;">Page 162</p> <p>1 paragraph.</p> <p>2 Would you just compare. Generally</p> <p>3 Exhibits 7 and 8 appear to be very similar or</p> <p>4 almost identical.</p> <p>5 A. Yes, they appear to be -- from what I</p> <p>6 can tell, yeah, they look pretty similar.</p> <p>7 Q. Again, I know you didn't have time to</p> <p>8 review every single word but they're very similar,</p> <p>9 correct?</p> <p>10 A. They look similar.</p> <p>11 Q. So, now, sir, as part of or chief</p> <p>12 director of internal audit at Walgreens, do you</p> <p>13 recall seeing this February 7, 2007 letter as part</p> <p>14 of the -- your group's internal audit of the</p> <p>15 distribution centers?</p> <p>16 A. I don't recall seeing this document.</p> <p>17 Q. Just to make sure I'm not missing</p> <p>18 something, you don't recall in the last two</p> <p>19 exhibits, 7 and 8, seeing any synopsis or bullets</p> <p>20 or anything that captures the content in Exhibits 7</p> <p>21 or 8 when performing the audit, correct?</p> <p>22 A. I certainly don't recall that, no.</p> <p>23 Q. All right. Let me hand you what I will</p> <p>24 mark as Domzalski 9.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. So, all within a matter of approximately</p> <p>2 14 months, 15 months?</p> <p>3 A. Yes.</p> <p>4 Q. And, again, the second sentence of 9,</p> <p>5 Exhibit 9, says, "The purpose of this letter is to</p> <p>6 reiterate the responsibilities of controlled</p> <p>7 substance manufacturers and distributors to inform</p> <p>8 DEA of suspicious orders in accordance with 21</p> <p>9 CFR."</p> <p>10 Correct?</p> <p>11 A. I'm sorry. I lost you on that. Where</p> <p>12 are you at?</p> <p>13 Q. The second sentence of the first</p> <p>14 paragraph.</p> <p>15 A. First paragraph. Okay.</p> <p>16 Q. "The purpose of this letter is to</p> <p>17 reiterate the responsibilities of controlled</p> <p>18 substance manufacturers and distributors to inform</p> <p>19 DEA of suspicious orders in accordance with 21 CFR</p> <p>20 1301.74(b)."</p> <p>21 Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, just to quickly look over --</p> <p>24 quickly review this document.</p>
<p style="text-align: right;">Page 163</p> <p>1 (WHEREUPON, a certain document was</p> <p>2 marked as Walgreens-Domzalski</p> <p>3 Exhibit No. 9: 12/27/07 letter</p> <p>4 from U.S. DOJ DEA; MCKMDL00478910 -</p> <p>5 00478911.)</p> <p>6 BY MR. MOUGEY:</p> <p>7 Q. Do you see the date on this, sir,</p> <p>8 December 27, 2007?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And we've now -- the first sentence,</p> <p>11 "This letter is being sent to every entity in the</p> <p>12 United States registered with the Drug Enforcement</p> <p>13 Administration to manufacture or distribute</p> <p>14 controlled substances."</p> <p>15 Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And your understanding is, again, that</p> <p>18 would include Walgreens?</p> <p>19 A. Yes.</p> <p>20 Q. So, we've now seen correspondence from</p> <p>21 the U.S. Department of Justice DEA from</p> <p>22 September 27, 2006, February 7, 2007 and then a</p> <p>23 third letter, December 27, 2007, correct, sir?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 165</p> <p>1 The second paragraph, do you see the</p> <p>2 second sentence indicates that DEA regs require all</p> <p>3 distributors to report suspicious orders of</p> <p>4 controlled substances, right?</p> <p>5 A. Yes.</p> <p>6 Q. And I'm assuming the answer to this next</p> <p>7 question is the same as before, that you can't</p> <p>8 discern from the internal audit report whether your</p> <p>9 group's audit covered Walgreens' responsibility to</p> <p>10 identify suspicious orders, right?</p> <p>11 A. No, I cannot recall that.</p> <p>12 Q. And --</p> <p>13 A. Cannot identify it from the report.</p> <p>14 Q. You'll see here -- let's go down to the</p> <p>15 third paragraph.</p> <p>16 A. Yes.</p> <p>17 Q. "The regulation also requires the</p> <p>18 registrant inform the local DEA Division Office of</p> <p>19 suspicious orders when discovered by the</p> <p>20 registrant."</p> <p>21 Sir, is it safe to conclude that you</p> <p>22 can't tell from looking at this internal audit,</p> <p>23 meaning Exhibit 3, whether or not the excessive</p> <p>24 purchase reports or suspicious order reports were</p>

<p style="text-align: right;">Page 166</p> <p>1 sent when discovered by Walgreens?</p> <p>2 A. No, you can't tell.</p> <p>3 Q. And, sir, the next sentence, "Filing a</p> <p>4 monthly report of completed transactions</p> <p>5 ('excessive purchase report' or 'high unit</p> <p>6 purchases') does not meet the regulatory</p> <p>7 requirement to suspicious orders."</p> <p>8 There was no -- you can't tell whether</p> <p>9 or not your group, the internal audit report,</p> <p>10 analyzed whether or not Walgreens was fulfilling</p> <p>11 its obligations with the type of reporting it was</p> <p>12 providing to the DEA?</p> <p>13 A. No, I can't tell that.</p> <p>14 Q. Sir, if you skip a sentence, the next</p> <p>15 sentence says, "Registrants must conduct an</p> <p>16 independent analysis."</p> <p>17 Do you see where I am?</p> <p>18 A. Yes, I do.</p> <p>19 Q. "Registrants must conduct an independent</p> <p>20 analysis of suspicious orders prior to completing a</p> <p>21 sale to determine whether the controlled substances</p> <p>22 are likely to be diverted from legitimate</p> <p>23 channels."</p> <p>24 Did I read that right?</p>	<p style="text-align: right;">Page 168</p> <p>1 calls such reports 'suspicious order reports.'"</p> <p>2 Is it safe to conclude, sir, that the</p> <p>3 audit as Exhibit 3, we don't know whether or not</p> <p>4 your group determined whether the reports were</p> <p>5 daily, weekly or monthly, correct?</p> <p>6 A. Correct. You can't tell from the words.</p> <p>7 Q. Sir, the directors that worked, the five</p> <p>8 directors that worked for you.</p> <p>9 A. Yes.</p> <p>10 Q. Just on average, what were their annual</p> <p>11 salaries?</p> <p>12 A. Maybe in the \$150,000 range.</p> <p>13 Q. 150?</p> <p>14 A. Base salary.</p> <p>15 Q. 150,000 range. I'm assuming yours was</p> <p>16 more than 150?</p> <p>17 A. Yes.</p> <p>18 Q. In between 2 and 300?</p> <p>19 A. Probably closer to 2. 200,000.</p> <p>20 Q. Closer to 2. So, the five directors</p> <p>21 that you had performing these audit reports,</p> <p>22 Walgreens believed in enough, with their expertise</p> <p>23 and sophistication, that they would make about 150</p> <p>24 grand, correct?</p>
<p style="text-align: right;">Page 167</p> <p>1 A. Yes, you did.</p> <p>2 Q. And you can't tell looking at the scope</p> <p>3 of the audit in Exhibit 3 whether or not your group</p> <p>4 determined whether or not Walgreens was conducting</p> <p>5 an independent analysis of suspicious orders prior</p> <p>6 to completing the sale, correct, sir?</p> <p>7 A. No, I cannot tell that.</p> <p>8 Q. If you turn to the second page, sir, the</p> <p>9 back of it. The sentence that begins with</p> <p>10 "Registrants that rely on rigid formulas to define</p> <p>11 whether an order is suspicious may be failing to</p> <p>12 detect suspicious orders."</p> <p>13 Do you see that, sir?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Sir, is it safe to conclude that we</p> <p>16 can't tell from the scope of the internal audit</p> <p>17 report whether or not Walgreens was using a rigid</p> <p>18 formula to identify suspicious orders?</p> <p>19 A. That's correct. You can't tell.</p> <p>20 Q. And if you go to the next paragraph, the</p> <p>21 second sentence, "Daily, weekly, or monthly reports</p> <p>22 submitted by a registrant indicating 'excessive</p> <p>23 purchases' do not comply with the requirement to</p> <p>24 report suspicious orders, even if the registrant</p>	<p style="text-align: right;">Page 169</p> <p>1 A. Can you repeat the question? I don't</p> <p>2 know if I understood it.</p> <p>3 MR. MOUGEY: I will tell you what. Let's stop</p> <p>4 there for lunch, if that's all right.</p> <p>5 THE VIDEOGRAPHER: We are off the record at</p> <p>6 12:32 p.m.</p> <p>7 (WHEREUPON, a recess was had</p> <p>8 from 12:32 to 1:20 p.m.)</p> <p>9 THE VIDEOGRAPHER: We are back on the record</p> <p>10 at 1:20 p.m.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. Mr. Domzalski, are there -- is there a</p> <p>13 shared drive at Walgreens that during your tenure</p> <p>14 that has a list of all of the different audits that</p> <p>15 were performed?</p> <p>16 A. I don't know if it has a list. I</p> <p>17 think -- I think it has probably some folder</p> <p>18 mechanism that would capture individual audits</p> <p>19 performed, and I don't recall if it's by year or by</p> <p>20 area. I don't remember what the structure of the</p> <p>21 shared drives would be in.</p> <p>22 Q. But it's your recollection, irrespective</p> <p>23 of the shared drive, that Walgreens has a mechanism</p> <p>24 to capture what audits were performed and what</p>

<p style="text-align: right;">Page 170</p> <p>1 department?</p> <p>2 A. Yes, absolutely.</p> <p>3 Q. All right. Do you have an independent</p> <p>4 recollection of, during your tenure, how many</p> <p>5 audits were performed on the distribution centers</p> <p>6 in relation to the Controlled Substance Act</p> <p>7 Schedule II, Schedule III opiates?</p> <p>8 A. No, I don't.</p> <p>9 Q. Let's broaden that out.</p> <p>10 Do you have any recollection sitting</p> <p>11 here how many audits were performed on the</p> <p>12 distribution centers generally?</p> <p>13 A. No, I do not.</p> <p>14 Q. Do you have an understanding of the</p> <p>15 frequency of how often audits were to be performed</p> <p>16 on distribution centers?</p> <p>17 A. Not specifically. I would, again, best</p> <p>18 recollection would be that we would have had them</p> <p>19 on some kind of rotational basis, but I don't</p> <p>20 honestly recall what that rotational basis would</p> <p>21 have been.</p> <p>22 Q. Do you have -- I'm sorry.</p> <p>23 Do you have a recollection of just a</p> <p>24 typical frequency?</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. It's dated July 17, 2012, and if you</p> <p>2 see -- you know how sometimes you have PowerPoint</p> <p>3 and you have talking points below?</p> <p>4 A. Yes.</p> <p>5 Q. That's what this appears to be, right?</p> <p>6 A. Yes.</p> <p>7 Q. All right. Have you seen this before,</p> <p>8 just the first -- do you recall?</p> <p>9 A. No, I don't recall seeing this.</p> <p>10 Q. So, you'll see the notes that it -- "We</p> <p>11 want to work with you. We want to cooperate and</p> <p>12 avoid litigation." It appears to be communication</p> <p>13 between Walgreens and some regulator.</p> <p>14 So, where I want to direct your</p> <p>15 attention is Bates No. 19. On Bates No. 19, under</p> <p>16 the "Audit program." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. All right. Now, do you see that the</p> <p>19 first entrants under "Audit program" is</p> <p>20 "Mini-audits"?</p> <p>21 A. Yes.</p> <p>22 Q. And as you testified earlier,</p> <p>23 "Distribution center conduct mini-audits in order</p> <p>24 to ensure that the handling of Schedule II to V</p>
<p style="text-align: right;">Page 171</p> <p>1 A. No, I don't, especially in the broader</p> <p>2 picture of the audits, a lot of the audits we were</p> <p>3 doing, they may have been first-time audits of that</p> <p>4 specific -- of a specific area. So, it wasn't like</p> <p>5 all audits were subject to a rotational basis, but</p> <p>6 I think the -- my expectation would have been that</p> <p>7 the DC audits would have been on some more formal</p> <p>8 rotational basis.</p> <p>9 Q. I'm going to hand you what we're going</p> <p>10 to mark as Domzalski 10.</p> <p>11 (WHEREUPON, a certain document was</p> <p>12 marked as Walgreens-Domzalski</p> <p>13 Exhibit No. 10: PowerPoint,</p> <p>14 "Walgreen Co. Controlled Substance</p> <p>15 Anti-Diversion and Compliance</p> <p>16 Program"; WAGMDL0000659801 -</p> <p>17 00659856.)</p> <p>18 BY MR. MOUGEY:</p> <p>19 Q. And it's WAGMDL659803. This appears to</p> <p>20 be a PowerPoint. First page is titled "Walgreen</p> <p>21 Company Controlled Substance Anti-Diversion and</p> <p>22 Compliance Program."</p> <p>23 Do you see that on the first slide?</p> <p>24 A. Yes, I do.</p>	<p style="text-align: right;">Page 173</p> <p>1 controlled substance complies with DEA</p> <p>2 regulations."</p> <p>3 Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. "The audit reviews registration,</p> <p>6 security, employee screening, inventory</p> <p>7 requirements, recordkeeping and reporting."</p> <p>8 Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Okay. Now, below that is the "Internal</p> <p>11 audits," and the internal audit is what you and I</p> <p>12 were just reviewing under as Exhibit 3. Okay?</p> <p>13 A. Yes.</p> <p>14 Q. Now, do you see the reference</p> <p>15 "Distribution centers undergo more thorough audits</p> <p>16 every three to five years in order to ensure that</p> <p>17 the handling of Schedule II to V controlled</p> <p>18 substances complies with DEA regs"?</p> <p>19 A. Yes.</p> <p>20 Q. Does that comport with your general</p> <p>21 recollection of how frequent the internal audits</p> <p>22 were conducted on the distribution centers?</p> <p>23 A. It certainly sounds like a reasonable</p> <p>24 period of time, yes.</p>

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1 Q. So, during the time -- do you have --
2 that you were at Walgreens, do you have a
3 recollection, at least up until the end of '14,
4 that there were three distribution centers at
5 Walgreens that handled Schedule II and III opiates?

6 A. So, I don't remember specific numbers,
7 but I remember there were differentiations between
8 the DCs in terms of what products they handled and
9 that certainly only certain of those DCs handled
10 Schedule --

11 Q. So -- I'm sorry.

12 A. Yeah.

13 Q. At least according to this entry and
14 your general recollection, we should -- we should
15 have in our -- there should have been one or two
16 audits during your tenure of the distribution
17 centers while you were at Walgreens. Does that
18 make sense?

19 A. That's --

20 MR. HOUTZ: Object to form, foundation.

21 BY THE WITNESS:

22 A. It makes logical sense to me, yes.

23 BY MR. MOUGEY:

24 Q. Okay. Who would know that? Where would

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1 we go to know for sure? We have a PowerPoint. You
2 don't have a specific recollection. But I think
3 you said that that generally comports with your
4 recollection of three to five years.

5 Where would we know for sure? Where
6 would we go to look of how frequent the internal
7 audits were of the distribution centers?

8 A. Probably for sure in the shared drive
9 would be, again, some record of -- I don't know,
10 again, what form you'd have to take, but certainly
11 the data would be there.

12 Q. All right.

13 A. I don't know if there is better
14 locations.

15 Q. Let me broaden that question up.

16 Is there a -- and I apologize because I
17 think you told me this earlier.

18 But what was the catalyst or initiation
19 of an audit where they -- was someone in your
20 group? Did someone keep track of how often the
21 audits would occur? Or just tell me what the
22 genesis of an audit was.

23 A. So, I think there is -- I think you have
24 to look at it, step up to the overall audit

REDACTED



REDACTED



REDACTED



REDACTED



REDACTED



REDACTED



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